

In the Matter of Merchant Mariner's License No. Z-0235723-D1 and
Issued to: GARY LEE HILTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1105

GARY LEE HILTON

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 27 May 1959, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification alleges that, on or about 12 November 1957, Appellant was convicted by the Criminal Court, State of Maryland, a court of record, for a violation of the narcotic drug laws of the State of Maryland (unlawfully attempting to obtain a narcotic drug, to wit: pantapon) and placed on probation for two years.

At the hearing, Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence a certified copy of the indictment alleging the above offense and docket entries showing that after Appellant entered a plea of not guilty, on 12 November 1957, he was placed on "probation before a verdict." The defense did not submit any evidence.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was mailed to counsel on 27 May 1959. Notice of appeal was timely filed on 13 June. A memorandum brief was submitted by counsel on 27 July.

On appeal, counsel contends that under an unusual Maryland statute, Appellant was not convicted when placed on "probation before a verdict" after a plea of not guilty. Actually, as shown by a certified copy of the Order for Probation signed by the Judge in this case, Appellant was released on "probation, before conviction." If there is a violation of probation, the case will be tried de novo on the original indictment. This is also indicated by the Order for Probation.

APPEARANCE: Sol C. Berenholtz of Baltimore, Maryland
by Solomon Kaplan, Esquire, of Counsel.

OPINION

Title 46 U.S. Code 239b(b)(1) requires a conviction. On the bases of the peculiar Maryland law involved, the evidence, and the Order for Probation submitted on appeal, I agree with Appellant's contention that there was no conviction since a violation of probation would only permit a trial under the original indictment.

The statute involved appears in the Annotated Code of Maryland, Article 27, section 641, and reads as follows:

"The circuit courts of the several counties in this State and the Criminal Court of Baltimore City, before conviction of any person accused of crime with the written consent of the person so accused, including persons appealing from convictions before trial magistrates, whether a minor or an adult, and after conviction or after a plea of guilty or nolo contendere, without such consent, are empowered, during the term of court in which such consent, conviction or plea is had, to:

- (1) Suspend the imposition of sentence; and/or
- (2) Place such person on probation without finding a verdict; and
- (3) Make such conditions of suspension of sentence and probation as the court may deem proper. (1955, ch. 436; 1957, ch.316)."

Although according to this law, a person could be placed on probation before a verdict "after conviction," the Order for Probation states that this was a case of probation "before conviction" such as is also provided for in the law. Since the probation was imposed after a plea of not guilty and the Order for Probation was signed by the Judge in Appellant's case, it is not possible to logically conclude that this was a case of probation "after conviction." The result would not necessarily be the same if a person were placed on probation before a verdict after a plea of guilty or nolo contendere.

The conclusion that the charge was proved is reversed. The charge and specification are dismissed.

Ordinarily, evidence will not be received on appeal but it would serve no purpose in this case to remand it for the introduction of the Order for Probation before the Examiner. It appears in the record that counsel was not given an opportunity to research this matter before the Examiner rendered his decision.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 27 May 1959, is VACATED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 7th day of August, 1959.